THE FUTURE *of*
FREEDOM FOUNDATION

The Case Against Medical Licensing

By Lawrence D. Wilson
January 1. 1994

For the first 120 years of our history, America had, essentially, a free-market health-care system. There were few licensing laws or other barriers to entry into the healing arts. A variety of practitioners offered services, including herbalists, nature-care therapists, hydrotherapists, osteopaths, allopaths and homeopaths. There was a variety of healing schools and clinics. During this time, America was among the healthiest nations, with the lowest infant mortality rate in the world. (Now we are tied for 19th among 19 developed nations.) Costs were not a problem because open competition kept prices down. Low costs made health care widely accessible. Laws against fraud and negligence protected the consumer.

Efforts to change the situation began as early as 1847. In this year, the American Medical Association (AMA) was formed to protect the interests of one group of doctors-the drug healers, or allopaths. This group, by the way, at times did more harm than good with their mercury, arsenic, leaches and other crude methods. One of the AMA's goals was to improve the income of its members. The best way to do this was to limit the supply of doctors.

The AMA's efforts culminated in 1910, when Abraham Flexner, a former school director who was not a physician, was commissioned by the Carnegie Foundation for the Advancement of Teaching to evaluate medical schools. He was the brother of Simon Flexner, head of the Rockefeller Institute for Medical Research. Working closely with the AMA, he completed a survey of medical schools that was practically a carbon copy of a report the AMA had done several years before. The report found most schools to be "substandard."

Mr. Flexner and his friends at the Carnegie Foundation, Rockefeller Institute and the AMA convinced Congress that to "improve" health care, most healing schools should be closed. They also recommended licensing of doctors and hospitals as well as governmental subsidies to drug-medicine schools and research. These measures were all adopted by Congress between 1910 and 1920. The number of healing schools fell from 131 in 1910 to 69 in 1944. The closings meant many fewer physicians were trained. Not surprisingly, only the drug-medicine schools survived. The other healing schools were either shut down or failed because their graduates could no longer get a license. The situation remains the same today, except that several alternative groups, including chiropractors and naturopaths, have fought back by the passage of their own licensing laws in many states.

Problems with licensing can be divided into several groups:

Philosophical and political objections

• Licensing changes the profession of healing from a citizen's sovereign right to contract with another to a state privilege. This greatly expands the power of the state and reduces the sovereignty of the individual. Also, the state is permitted to intrude deeply into one of the most intimate contracts-that between the physician and patient.

• Medical-practice laws in most states make it a criminal offense to "diagnose, prescribe, or treat anything, mental or physical, real or imaginary" (quoted from the Arizona medical practice act). These laws needlessly criminalize thousands of well-intentioned individuals who have done no harm to anyone. Heavy-handed tactics, including daylight raids by SWAT teams, have been used to enforce licensing laws. Also, the laws are so vague that enforcement is often arbitrary and based on personal antagonism, vindictiveness, or envy rather than clear legal guidelines.

• Licensing boards have police power, but are made up only of members of the same profession. Ordinary citizens have little or no representation, but must abide by decisions of the licensing board.

• Licensing is inextricably involved with the welfare state. For example, Medicare will only reimburse licensed practitioners. In Arizona, registered dietitians fought hard to become licensed, not because of any public need, but so that they could receive government insurance reimbursement. Medical

licenses also serve as "tickets of entry" for many government research jobs, grants and fellowships. Medical licensing is, in fact, an integral part of an arbitrary system of forced wealth redistribution.

Economic objections

• Licensing places a barrier between the buyers and sellers of health services. This restriction of trade reduces the supply of services. Reducing the supply of health services increases the cost of services.

• Expensive schooling, internships, exam fees and licensing fees raise the cost of entry into the profession. These costs are passed on to the consumers of health services, raising prices.

• Licensing reduces competition among practitioners, resulting in higher prices and reduced quality of care.

• Licensing reduces innovation by specifying what is "approved" practice. Reduced innovation raises costs and lowers the quality of services.

Medical objections

• Licensing reflects a fundamental misunderstanding of the nature of the healing arts. Healing is a gift and an art. Many gifted individuals cannot afford, or for other reasons are not able to enter and complete, the six to twelve years of schooling necessary to obtain a medical license. Licensing deprives the population of the skill and art of these individuals.

• Licensing blocks innovation and the practice of alternative methods of healing.

• A licensed physician is no longer responsible only to the patient. His loyalty is divided between satisfying the patient and satisfying his licensing board.

Social objections

• Licensing gives the consumer of health care a false sense of security in his physician that can lead to false and unfulfilled expectations. This impairs the doctor-patient relationship and contributes to dependency and, later, anger and resentment. The present malpractice crisis is in part due to excessively high expectations of the public, generated in part by licensing of physicians.

• Licensing discriminates against the poor, who have more difficulty meeting educational and other requirements for licensure. Licensing has also been used to keep minorities and women out of the healing professions.

Without licensing, private certifying agencies would spring up to replace state licensure. Many such groups already exist. One could still choose an AMA-approved, board-certified physician. But one could also choose among a variety of alternative practitioners who are not permitted to practice at present. The public would be better protected from fraud and malpractice because no physician would be shielded by his license. Physicians would be directly accountable to their patients. Health care would operate in a manner similar to car care. There would be many levels and types of care available. Not everyone enjoys the same level of car care, but most people receive care, innovations are permitted, and competition keeps prices in check.

The negative effects of licensing include higher prices, reduced innovation, reduced access to care, restriction of the right to contract, and much poorer health of our population. Licensing also is an integral part of the welfare state whose principles are alien to our American way of life. America once did very well in the area of health care without medical licensing. It is time to move toward our previously successful experiment with a free-market system of health care.